# UNITED STATES TAX COURT WASHINGTON, DC 20217

EUGENIO ESPINOZA MARTINEZ,	)
Petitioner(s),	) )
v.	) ) Docket No. 29472-12.
COMMISSIONER OF INTERNAL REVENUE,	) )
Respondent	) )
	) )
	) )
	)

# <u>ORDER</u>

This case was on the Court's October 27, 2014 trial calendar for San Antonio, Texas. Slightly more than \$5,000 is at stake. On November 12, 2015 the IRS moved for summary judgment. There are four issues:

whether Mr. Martinez accurately reported gross receipts on his Schedule C for 2009;

whether he accurately reported Schedule C expenses for 2009;

whether he accurately reported Schedule A expenses for both 2009 and 2010; and

whether he is entitled to a dependency exemption for his mother for 2010.

It is unusual for these kind of fact-based issues to be set up for resolution through summary judgment, so a bit of background is in order.

# **Background**

Mr. Martinez is an inmate in the Texas prison system, where he was sentenced after he pled guilty to aggravated assault causing serious bodily injury and tampering with physical evidence, crimes that will leave him an inmate for the next decade. *Martinez v. State*, No. 13-12-00541-CR, 2012 WL 5188037 (Tex. App. Oct. 18, 2012).

Before he was imprisoned, he was a schooteacher who filed income-tax returns in the usual way. This case arises from his 2009 and 2010 tax years. The Commissioner sent him a notice of deficiency for these years in September 2012, after he had already begun serving his sentence.

Prisoners routinely exercise their right to petition Tax Court to challenge notices of deficiency. And, despite the undoubted problems of conducting litigation from behind bars, we do try to develop and resolve cases instead of continuing them until the end of a inmate's sentence<sup>1</sup> -- which of course may never come. *See, e.g., Rader v. Commissioner,* Docket No. 7952-12S (serial killer serving 10 consecutive life sentences); "BTK Sentenced to 10 Life Terms," CNN (Aug. 18, 2005), http://www.cnn.com/2005/LAW/08/18/btk.killings/.

Part of our method is to be sure there really are triable issues of fact. Not every case -- and this may be particularly true in tax cases -- requires a trial. Our Rule 122 allows the parties to submit a case for decision without a trial; Rule 121 provides for decision by summary judgment. But to submit a case without trial, the parties must agree (stipulate) to what evidence should be considered by the Court. Our process to develop a stipulation is set out in Rule 91.

We have often said that "the bedrock of Tax Court practice has been the stipulation process." *Branerton Corp. v. Commissioner*, 61 T.C. 691, 692 (1974). The stipulation process greatly serves judicial economy and fosters collaboration and cooperation between the litigants. *See Ratke v. Commissioner*, 95 T.C.M. (CCH) 1571, 1576. Both parties benefit from stipulations as they prevent the

<sup>&</sup>lt;sup>1</sup> This is a particular problem when prisoners are in a state system. Writs of *habeas corpus ad testificandum* are difficult to manage between different sovereigns, and security concerns make transportation of prisoners quite difficult. *See, e.g., Maurer v. Pitchess*, 530 F. Supp. 77 (C.D. Cal. 1981), *aff'd in part and rev'd in part*, 755 F.2d 936 (9th Cir. 1985). Many such cases are for relatively small amounts, which adds to the need to find economical solutions to resolving such cases.

unnecessary presentation of proof of otherwise agreed upon facts. *See Stamos v. Commissioner*, 87 T.C. 1451, 1456 (1986). Stipulations also reduce the amount of costly and time consuming formal discovery necessary to develop the facts of each case. We take the informal discovery process very seriously. By rule we require the parties to put forth their best efforts to cooperate in informal settings, and we enforce this rule in full force. *See* Rule 70(a)(1); *Branerton*, 61 T.C. at 692.

Parties usually cooperate in drafting stipulations but, if they don't, our Rule 91(f) lays out a different path. The aim in both cooperative stipulations and stipulation-by-motion is to reduce to a minimum the factual disputes between the parties to enable more focused litigation in a high-volume court like ours. Rule 91(f)(4) directs us to be careful, however, not to determine a "genuinely controverted or doubtful issue of fact" before trial.

The IRS moved in September 2014 for a Rule 91(f) order to show cause why facts shouldn't be treated as established. Our Rules require us to grant this kind of motion, and then give the taxpayer a chance to review it and be very specific about what he disagrees with and what he doesn't disagree with. We ordered Mr. Martinez to be re-served with the Commissioner's 91(f) motion and gave him till March 12, 2015 to respond.

Mr. Martinez didn't respond in the usual manner (by stating where exactly he agreed or disagreed with the proposed stipulation), but instead claimed that the warden had seized all his records. This prompted us to examine the entire record in the case, and we concluded that Mr. Martinez's responses to the IRS's proposed stipulation was evasive. *See* Tax Court Rule 91(f)(3).

#### Here's what the record showed:

Mr. Martinez filed this case in December 2012 to challenge a notice of deficiency that determined he understated his taxes for 2009 and 2010 by a little more than \$5,000.

In February 2013 Mr. Martinez asked for an indefinite extension of time to reply to the Commissioner's answer because "all of his records are nowhere to be found" and -- because of his incarceration -- he had to work with family members via correspondence.

In April 2013 he asked for an indefinite stay of proceedings because he had been admitted to a mental health unit and wouldn't be able to regain access to his "legal documents . . . until he returns to his unit of assignment." Although the Commissioner pointed out, quite accurately, that Mr. Martinez didn't attach any documentation to this motion to support his assertions, we granted the stay until September 2013. We also advised him of the Court's practice of recognizing someone on the outside as a representative, guardian, or "next friend." The Commissioner likewise reminded Mr. Martinez that he could give someone a power of attorney to try to negotiate a settlement with the IRS.

In January 2014 he wrote the Court and again asked for an indefinite stay. He explained that he was now out of the mental health unit, but was in divorce proceedings with his wife. Since the IRS sent the notice of deficiency to Mr. Martinez alone, we denied his request and put the case back on the general docket.

Less than two weeks before the calendar call Mr. Martinez moved for another stay of proceedings on the ground that his mother had died. He again attached no proof of this, but the Court granted his motion at calendar call.

Mr. Martinez finally answered the Commissioner's Rule 91(f) motion by saying that his late mother had the records and his power of attorney, and that with her death those records are again "nowhere to be found." He simultaneously filed a motion stating that all his records were seized by the guards, including "legal documents in [the] form of affidavits, receipts, and other documents used to support Petitioner's claims as it regards this tax dispute" that his mother "made diligent and painstaking efforts to obtain."

In sum, the records necessary to decide this case on the merits were either (a) nowhere to be found; (b) waiting for him when he returned to his unit of assignment when he was released from a mental health unit; (c) lost when his mother died; and (d) seized by guards from his cell.

We recognized the difficulties that prisoners can have in disposing of tax litigation while incarcerated, but stressed to Mr. Martinez that we must move this case forward. We gave him one more chance to respond to the Commissioner's 91(f) motion.

Mr. Martinez filed his response earlier this summer. Rule 91(f)(2) requires that the

response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. . . .Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose.

Mr. Martinez didn't do this. Instead of specifically listing which proposed stipulations he agreed with and which he disputed, he complained about the inadequate tax-law resources of the law library where he is imprisoned. He asserted that he cannot obtain the documents he needs from third parties due to his incarceration, which contradicts his earlier assertions that his records were in the possession of his mother or others outside prison who could have helped him. He also said in his response that his mother had at least a few records but he didn't even describe what they were. He attached grievance forms and correspondence that showed he tried to get *pro bono* representation. But he didn't respond to the actual proposed stipulations that the IRS drafted.

As a result, we issued a September 8, 2015 order that deemed the Commissioner's proposed stipulations to be stipulated. The key stipulations as they relate to the issues in this case are that Mr. Martinez has no records to substantiate the expenses that he claimed on his schedules A and C.

# **Respondent's Summary-Judgment Motion**

With at least the stipulation part of the case finished, we ordered the Commissioner to move for summary judgment if settlement failed. On November 12, 2015 he did.

We may grant summary judgment when there is no genuine dispute of material fact and a party is entitled to judgment as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). After the moving party submits a proper summary judgment motion, the nonmoving party cannot rest on allegations or denials in his pleadings, but he must present specific facts showing that there is a genuine issue for trial. Rule 121(d); Dahlstrom v. Commissioner, 85 T.C. 812, 820 (1985). However, the moving party still bears the burden of proving there is no genuine dispute of material fact, and we read factual inferences in a manner most favorable to the nonmoving party. Id. at 821.

Mr. Martinez *again* didn't respond in the customary way -- going through each paragraph of the Commissioner's motion and stating why he thought a trial was necessary or pointing out where he thought there was some flaw in the Commissioner's reasoning. Our rule requires that a taxpayer fighting a motion by the Commissioner "may not rest upon the mere allegations or denials of such party's pleading, but such party's response, . . .must set forth specific facts showing that there is a genuine dispute for trial." T.C. Rule 121(d).

We are sympathetic to the difficulties of litigating from within a prison, and particularly the lack of resources that Mr. Martinez faces. We will therefore attach a copy of Rule 121 (the rule that governs summary judgment motions), and a copy of the Court's Q & As on summary judgments for people representing themselves. Because finding a notary for the production of an affidavit is unlikely, we instruct Mr. Martinez that 28 U.S.C. § 1746 allows him to file an unsworn declaration under penalty of perjury in lieu of an affidavit.

Not every case requires a trial. And if Mr. Martinez would finally state why exactly he claimed the deductions that he claimed, and explain what his schedule C business was, and give in detail his side of the story on each paragraph of the Commissioner's motion, it may turn out that the Commissioner doesn't disagree or may agree with him to treat such a statement as his testimony.

But this is the last chance we will give him to tell us any facts he has that he would state in testimony were this case to go to trial. It is therefore

ORDERED that on or before May 2, 2016 Mr. Martinez file a supplemental response to the Commissioner's motion for summary judgment. He should include a written statement discussing each paragraph of the Commissioner's motion with which he disagrees. If he includes, at the end of this statement, a statement that "I declare under penalty or perjury that the foregoing is true and correct. Executed on [date]" and then signs it, we will treat this statement as if it were an affidavit. It is also

ORDERED that the Clerk include with this order a copy of Rule 121 and of the page from the Court's website "What is a motion for summary judgment? How should I respond to one?" available at www.ustaxcourt.gov/taxpayer info start.htm#START40.

(Signed) Mark V. Holmes Judge

Dated: Washington, D.C. March 16, 2016

#### UNITED STATES TAX COURT

Petitioner(s)	
v. OMMISSIONER OF INTERNAL REVENUE,	Docket No.
Respondent	•
UNSWORN DECLARA	TION UNDER PENALTY OF PERJURY
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#### TITLE XII

#### **DECISION WITHOUT TRIAL**

#### RULE 120. JUDGMENT ON THE PLEADINGS

- (a) General: After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.
- (b) Matters Outside Pleadings: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

# RULE 121. SUMMARY JUDGMENT

- ¹(a) General: Either party may move, with or without supporting affidavits or declarations, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial, and in any event no later than 60 days before the first day of the Court's session at which the case is calendared for trial, unless otherwise permitted by the Court.
- <sup>2</sup>(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits or declarations, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and

<sup>&</sup>lt;sup>1</sup>The amendment imposing a 60-day limit for filing a motion for summary judgment is effective with respect to cases in which the Notices of Trial are issued after May 5, 2011. The amendment pertaining to declarations is effective as of July 6, 2012.

<sup>&</sup>lt;sup>2</sup> The amendments are effective as of July 6, 2012.

- (c) Case Not Fully Adjudicated on Motion: If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.
- <sup>1</sup>(d) Form of Affidavits or Declarations; Further Testimony: Defense Required: Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a declaration shall be attached thereto or filed therewith. The Court may permit affidavits or declarations to be supplemented or opposed by answers to interrogatories, depositions, further affidavits or declarations, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine dispute for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

<sup>&</sup>lt;sup>1</sup> The amendments are effective as of July 6, 2012.

- <sup>1</sup>(e) When Affidavits or Declarations Are Unavailable: If it appears from the affidavits or declarations of a party opposing the motion that such party cannot for reasons stated present by affidavit or declaration facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits or declarations to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits or declarations of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits or declarations of the moving party is through cross-examination of such affiants or declarants or the testimony of third parties from whom affidavits or declarations cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits or declarations are genuinely disputed.
- <sup>2</sup>(f) Affidavits or Declarations Made in Bad Faith: If it appears to the satisfaction of the Court at any time that any of the affidavits or declarations presented pursuant to this Rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

#### RULE 122. SUBMISSION WITHOUT TRIAL

(a) General: Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way) may be submitted at any time after joinder of issue (see Rule 38) by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court.

<sup>&</sup>lt;sup>1</sup>The amendment is effective as of July 6, 2012.

<sup>&</sup>lt;sup>2</sup>The amendment is effective as of July 6, 2012.

Taxpayer Information: Starting a Case

Please direct any questions or comments regarding our Taxpayer Information section to info@ustaxcourt.gov.

STARTING A CASE

How do I start a case in the Tax Court?

You must file a <u>petition</u> to begin a case in the Tax Court. A party who files a petition in response to an IRS notice of deficiency or notice of determination is called the petitioner. The Commissioner of Internal Revenue is referred to as the respondent in Tax Court cases.

Who can file a petition with the Tax Court?

Anyone can file a petition who has received:

- 1. A notice of deficiency, or
- 2. A notice of determination.

You can also file a petition (in certain circumstances) if you filed a claim with the IRS for relief from joint and several liability (innocent spouse relief), six months have passed, and the IRS has not issued you a determination letter.

Is there anyone who can help me file a petition and/or help me in my case against the IRS?

Yes. You may hire an attorney or other person admitted to practice before the Tax Court to represent you before the Tax Court.

You might qualify for help from an organization referred to as a tax clinic. There are a number of tax clinics throughout the United States participating in the Tax Court's Clinical Program. You may want to contact a clinic in your geographic area. The Internal Revenue Service (Taxpayer Advocate Service) has a list of tax clinics on its Web site. The clinics have income restrictions, and a representative of the clinic will let you know whether you qualify to be represented. The Tax Court will send you information about tax clinics when you file your petition and when a Notice of Trial is sent to you.

There is additional help from organizations we refer to as calendar call programs. Tax practitioners volunteer their time to assist unrepresented low income taxpayers through professional organizations. If there is a participating Calendar Call Program in the city where you have requested trial, the judge may identify the volunteer practitioners at the beginning of the trial session.

These tax clinics and Bar-related calendar call programs are not part of the Internal Revenue Service or the Tax Court. The Tax Court does not endorse or recommend any particular tax clinic or Bar-related calendar call program.

You may be represented in your Tax Court case by a private attorney, a clinic representative, or other person admitted to practice before the Court. The agreement of representation is between you and the representative and is independent of the Tax Court or the IRS. Your representative must be admitted to practice before the Tax Court. All representatives who practice before the Tax Court are subject to the American Bar

Association's Model Rules of Professional Conduct.

How can I find a tax clinic?

There are tax clinics throughout the United States participating in the Tax Court's Clinical Program. You may want to contact one of the clinics in your geographic area. The Taxpayer Advocate of the Internal Revenue Service has a more extensive clinic list available on the IRS Web site (www.irs.gov). The Tax Court will send you information about tax clinics when you file your petition. The Court will also send tax clinic information when the Notice of Trial is sent to you. These tax clinics are not part of the Internal Revenue Service or the Tax Court. The Tax Court does not endorse or recommend any particular tax clinic or organization.

If I want to represent myself or if I don't qualify for representation by a tax clinic, can I represent myself?

You may file a petition with the Tax Court even if you do not have a representative. You may also present your case to a Judge without being represented. This guide is provided to help you in that process. If you decide to file a petition and to proceed to trial without a representative, you must pay close attention to all the Tax Court orders and notices you receive and all the instructions provided. A petitioner who is not represented is still required to abide by the <u>Tax Court Rules of Practice and Procedure</u> (Rules). If you have difficulty reading, writing, or understanding written instructions, you should seek help.

What should I do if I don't speak and/or understand English very well?

All proceedings in the Tax Court are in English. The Tax Court does not have staff available to assist non-English speaking petitioners. The <u>Tax Court Rules</u> provide that it is the responsibility of the parties to make arrangements for and compensate interpreters.

Many Low Income Taxpayer Clinics (LITCs) offer services in languages other than English. You can review the Court's list or the Taxpayer Advocate's (IRS) more extensive list and find a clinic convenient to you that may provide the language assistance you need.

Are there any circumstances where the Court will help pay for the cost of an interpreter at trial?

Ordinarily, the parties are expected to arrange for and compensate any needed interpreters. There may, however, be extraordinary situations in which the Court will compensate an interpreter. You may file a motion requesting that the Court pay the expenses of an interpreter. In your motion you must satisfy the Court that (1) a language barrier exists (you speak primarily a language other than English or you have a hearing impairment); (2) you do not have the financial means to pay for an interpreter; and (3) the case presents a substantial question which is not frivolous. A Judge has discretion to grant or deny your motion to pay the expenses of an interpreter.

If I need an interpreter at trial what should I do?

You should make arrangements as early as possible to have an interpreter available. If you are unable to afford an interpreter, you should file a motion to request that the Court pay the expenses of an interpreter as soon as possible and generally no later than 30 days before

trial. In your motion you should explain to the Court that you satisfy the three conditions set forth above: (1) A language barrier exists (you speak primarily a language other than English or you have a hearing impairment); (2) you do not have the financial means to pay for an interpreter; and (3) the case presents a substantial question which is not frivolous.

I thought I came to an agreement with the IRS, but the IRS sent me a notice of deficiency or a notice of determination stating that I have a right to file a petition with the Tax Court. Should I file a petition even though I thought my case was settled?

It is difficult to know the circumstances in which you believe your case was settled. Because the IRS issued a notice, the IRS may be proceeding as if there is no settlement. To protect yourself against an unagreed assessment of tax or collection action, you should file a petition within the period set forth in the notice. You may also wish to contact the IRS about the status of your case.

A If I decide to file a petition, what is the next step?

You can fill out a petition on the Tax Court Web site and print it, print out the petition form and fill it out, or fill in the petition form contained in the informational packet available from the Court.

- A How do I fill out my petition?
- 1. First, fill in your full name on the line at the top left of the petition. If you are a married couple filing a joint petition or if you were married in the tax year the return was filed and wish to file a joint petition, fill in both names on this line.
- 2. Next, check the appropriate box on line 1 for the type of case you intend to file. Place an X in the box that represents the type of letter you received from the IRS. For example, if you received a Notice of Deficiency, check that box. If you have a collection case, that is, the IRS has filed a Federal tax lien against property you own or has proposed a levy on your wages, bank accounts, State tax refunds, etc., and issued you a notice of determination, check the box for Notice of Determination Concerning Collection Action. If you received a notice of determination concerning a request for relief from joint and several liability (innocent spouse relief), or if you filed a claim with the IRS for relief from joint and several liability, six months have passed, and the IRS has not issued a determination letter, check the box marked Notice of Determination Concerning Your Request for Relief From Joint and Several Liability. Lastly, if you received a Notice of Determination Concerning Worker Classification, check that box.
- 3. On line 2, put the mailing date of the notice you received. You should also enter the city and State of the IRS office that issued you the notice.
- 4. Put the tax year(s) for which the notice was issued on line 3.
- 5. On line 4, you should choose whether you want your case conducted as a regular or small tax case and check the appropriate box. If you do not check a box, the Court will file your case as a regular case.
- Thow do I decide whether to elect regular or small tax case procedures?

The tax laws provide for small (S case) procedures for resolving disputes between

taxpayers and the IRS. To have your case tried as an S case, you must qualify and choose to have S case procedures applied to your case and the Tax Court must agree with your choice. Generally, the Tax Court will agree with your request if you qualify for S case procedures.

- 1. Do I qualify for S case procedures?
  - In a deficiency case, the amount of the deficiency and any additions to tax or penalties--but not including interest--that you dispute for each year must be \$50,000 or less. In a collection action, the total unpaid tax (including interest and penalties) for all years cannot exceed \$50,000. In a request for spousal relief, the total amount of relief sought (including interest and penalties) cannot exceed \$50,000. In a worker classification case, the amount of employment taxes in dispute cannot exceed \$50,000 for any calendar quarter.
- 2. What should I consider in deciding whether to choose S case procedures? You should consider the following:
  - A. S case trials are held in about 15 more cities than are regular cases.
  - B. Pretrial and trial procedures are less formal in S cases.
  - C. The Federal Rules of Evidence (which provide many of the rules that regulate the conduct of the trial) are relaxed in S cases. This means that the Judge can consider any evidence that is relevant.
  - D. There is no right of appeal to a U.S. Court of Appeals from a decision in an S case. If you lose your case, or lose some issues in your case, you cannot appeal the decision of the Tax Court to one of the U.S. Courts of Appeals. If you win your case, or win some issues in your case, the IRS cannot appeal. In contrast, you and/or the IRS can appeal a decision in a regular (non-S) case to a U.S. Court of Appeals.
- 3. How do I choose S case procedures?

  File Form 2, Petition (Simplified Form), and place an X in the box on the petition form that indicates that you want your case conducted under small tax case procedures.
- 4. What do I do if I don't want to choose S case procedures?

  Use Form 1, Petition (Sample Format), file Form 2, Petition (Simplified Form), and place an X in the box on the petition form that indicates that you want your case conducted under regular tax case procedures, or file Form 3, Petition for Administrative Costs (I.R.C. Sec. 7430(f)(2)).
- 5. If I don't choose S case status in my petition, may I choose it later?

  Yes. If you qualify, you can generally choose S case procedures anytime before trial.

  After your trial begins, however, it is too late to choose S case status.
- 6. What if I chose, and the Tax Court granted me, S case status but I changed my mind and want my case heard as a regular case? How do I change the status of my case? You can change from S case to regular case status. You need to make the choice, however, before the trial of your case begins. You should make the request to the Tax Court in writing and should include your name and the docket number in your request. You should send a copy of your request to the IRS attorney who filed the "Answer" to your petition. Because the Tax Court has about 15 more places of trial in S cases than in regular cases, it is possible that the place of trial might need to be changed if you change from S case to regular case status.
- 7. How can I tell whether my case is an S case?

  Look at the number in the upper right corner of any document you have received from the Tax Court. That number is known as the "docket number". If that number has an S at the end, it means that your case is an S case. Example: 98765-04S is an S

case docket number because it ends in S.

Now that you have decided whether you will or will not elect the small tax case (S case) procedures, the next step is to file your petition.

What should I say in my petition?

Line 5 of the petition asks you to tell the Court why you disagree with the IRS determination in your case. You should list clearly and concisely the errors that you believe the IRS made in the notice of deficiency or the notice of determination that was sent to you. List each issue separately using letters or numbers for each item, and briefly state why you disagree with the IRS. Be sure to list each item in the notice of deficiency or notice of determination with which you disagree. For example:

- A. I disagree with the IRS's disallowance of my claim for head of household status because I satisfied the requirements for claiming that status.
- B. I disagree with the IRS's disallowance of my dependent exemptions for my children because each of them satisfies the tests for dependency.
- C. I disagree with the IRS's disallowance of my claim for the earned income credit because I correctly calculated the credit on my return.

Or:

I disagree with the IRS's determination that a levy be imposed on my wages because:

- (1) such a levy would constitute a financial hardship for me and my family; and
- (2) because I have proposed an alternative method of paying my federal tax liability.

On line 6 of the petition you should briefly state the facts on which you rely to support your position. List each statement of facts in the same order as you listed the issues on line 5. Clearly stating why you believe the IRS is wrong and what facts you rely upon will help the Tax Court understand your position.

Lastly, sign your name, preferably in blue ink, on the line for signature of petitioner. If you are filing a joint petition, be sure to have your spouse sign the petition as well. It is important that each signature be an original signature (and not a copy). Fill in your address and phone number on the lines provided. If the petition is a joint petition, your spouse must provide his or her address and phone number.

When should I file my petition?

The tax laws set forth the different time limits for filing petitions in different kinds of cases. The IRS notice usually provides the number of days that you will have to file a petition, counting from the date the IRS notice was mailed to you. That date is usually stamped on the notice of deficiency or the notice of determination. In addition, the IRS notice may state the last date for filing the petition. The tax laws are very strict on filing dates and do not

allow extra time for filing a petition. For example, in a deficiency case, the petition must be filed by the 90th day (or the 150th day if the notice is addressed to a person outside the United States) from the date of the mailing of the notice of deficiency, but in a collection action, the petition must be filed within 30 days of the mailing of the notice of determination. The Tax Court cannot extend the time for filing a petition.

Mow do I file my petition?

The <u>petition</u> must be filed with the Tax Court in Washington, D.C. You may hand deliver it to the Tax Court between 8 a.m. and 4:30 p.m. (Eastern time), or mail it to:

United States Tax Court 400 Second Street, N.W. Washington, D.C. 20217-0002

If you are unable to use the form from this Web site, write a letter to the Tax Court stating that you want to file a petition and that you would like any necessary forms and documents sent to you. The letter should include the amount in dispute, your name, your address, your telephone number, the year(s) at issue in your case, and a list of the errors you believe the IRS made. Include a copy of the IRS notice (see privacy discussion below) that you wish to dispute and follow the mailing procedures described above.

Me How can I protect the privacy of my Social Security number?

You should submit Form 4. Statement of Taxpayer Identification Number, when you file your petition, and redact (delete) your Social Security number or Employer Identification number from any notice you attach to your petition and from any other document you file with the Court. The word redact means to remove or delete information. See Rule 20(b). Do not include your Social Security number on any document you send to the Court (except Form 4).

How can I protect the privacy of personal information such as my financial account numbers?

You should not include on, and where necessary you should redact or delete from, any document filed with the Court personal information such as Social Security numbers or Employer Identification numbers, dates of birth, names of minor children, and financial account numbers. See Rule 27(a). If you do not do so, your personal information will be part of the public record of your case. When information is part of the public record, it means that anyone can come to the Court and look at the file and obtain information.

How do I delete or redact my Social Security number or other private numbers from documents?

The simplest way to delete or redact is to use a black marker and black out the numbers or information you want to be private. For example, if the notice you received from the IRS has your Social Security number (000-00-0000), you should black out the number when you attach the notice to the petition. Do not write these numbers on your petition, or on any other documents submitted to the Court. You should write your Social Security number on Form 4, Statement of Taxpayer Identification Number, which will not be available to the public.

What if I forget to redact or delete personal information?

You may send the Court within 60 days of the original filing of a document on which you inadvertently disclosed personal information a complete, redacted copy of the previously filed document for substitution in the record; the redacted document should be clearly marked "redacted" (under the docket number). You should explain that you want to substitute the redacted document for the previously submitted (unredacted) document. See Rule 27(h).

May I file my petition electronically or by fax?

No, the Tax Court does not permit electronic filing (eFiling) of a petition or the filing of a faxed petition. The Tax Court does permit eFiling of other documents, however. More information on eFiling is available in the <u>Petitioners' Guide to Electronic Case Access and Filing</u> available on the Court's <u>eAccess Web page</u>.

How do I ensure that the petition is filed on time?

The petition must be received by the Court or mailed to the Court within the time specified in the Internal Revenue Code. The IRS normally lists the last day for filing a timely petition with the Court in a notice of deficiency.

Generally, your petition will be treated as timely filed if the Tax Court receives it in an envelope bearing a legible U.S. Postal Service (USPS) postmark that is within the time for timely filing. There are safer alternatives to using regular first-class mail to mail a petition to the Court. Using certified or registered mail and obtaining a postmarked receipt from the USPS provides strong evidence that the petition was sent to the Tax Court on the certified or registered date of mailing. Another alternative is to use a **DESIGNATED** private delivery service. You should be aware that not all services offered by private delivery companies are **DESIGNATED** private delivery services. Please review <u>IRS guidelines</u> for what constitutes a **DESIGNATED** private delivery service. Using a **DESIGNATED** private delivery service by the private delivery company or the date that is shown on the shipping label generated by the private delivery company to its database.

Caution: A private meter mail stamp or a "postmark" from a private, online postage-printing service will not prove that the petition was timely mailed.

My petition is due today. Is it too late to file a petition with the Tax Court?

No. You can place your petition in the mail today or hand deliver the petition to the Tax Court in Washington, D.C., today. (If the last day for filing is a Saturday, Sunday, or <a href="https://holiday">holiday</a> in the District of Columbia, then you have until the next business day.) Using certified or registered mail or a designated private delivery service is preferable because it provides strong evidence that the petition was sent to the Tax Court on the registered mailing date. You will need a postmarked USPS registered mail or certified mail receipt or a receipt from a designated private delivery service.

Can I get an extension of time to file a petition?

No. By law, the Tax Court cannot extend the time for filing a petition.

Does it cost anything to file a petition?

Yes. The filing fee is \$60. You may pay by check or money order.

Are there any circumstances where I do not have to pay the \$60 filing fee?

Yes. The Tax Court may waive the filing fee if a petitioner establishes to the satisfaction of the Tax Court an inability to pay. The <u>Application for Waiver of Filing Fee</u> requires detailed information and must be signed under penalty of perjury. If the petition is a joint petition (filed by a married couple), then you may file one waiver form which should be signed by both petitioners. If the Tax Court denies your request to waive the filing fee and you do not pay the filing fee, your case may be dismissed.

Must I pay the amount of tax that the IRS says I owe while my case is pending in the Tax Court?

No, you do not usually need to pay the amount in dispute while your case is pending before the Tax Court. If the Tax Court ultimately concludes, however, that you owe some amount of tax, or if you settle or agree to an amount of tax liability, the law provides generally that interest runs on any unpaid tax from the date it was originally due until paid in full. Interest also runs on some penalties. Although you do not need to pay the amount in dispute while your case is pending in the Tax Court, you may do so if you want to stop the interest on the unpaid tax from accruing.

The rules regarding prepayment of tax and penalties differ in U.S. District Courts and the U.S. Court of Federal Claims. This guide does not provide information about the rules or procedures of those courts.

Should I include anything else with my petition?

Yes. Attach to the petition a complete copy of the notice of deficiency or the notice of determination, including the explanation of adjustments or IRS Appeals Officer's report that you may have received with the notice of deficiency or the notice of determination. You should remove your Social Security number from the notice of deficiency or notice of determination. See Notice Regarding Privacy and Public Access to Case Files. Do not attach any other documents such as tax returns, copies of receipts, or other types of evidence to the petition.

Should I send anything else to the Tax Court when I file my petition?

Yes. You should also submit a <u>Statement of Taxpayer Identification Number</u> (Form 4) and a <u>Request for Place of Trial</u> (Form 5), which tells the Tax Court where you would like to have your trial held. Select from the <u>list of cities</u> in which the Tax Court holds trial sessions. A <u>map</u> displaying the cities in which the Tax Court holds trial sessions is also available.

Where may I request a place of trial if I elected to conduct my case as a small tax case?

If you elected to conduct your case as a small tax case, you may request a place of trial in any of the cities listed on <u>Form 5</u>, <u>Request for Place of Trial</u>. Place an "X" in only one box to request your place of trial.

Where may I request a place of trial if I elected to conduct my case as a regular tax case?

If you elected to conduct your case as a regular case, you may request any of the cities not marked with an asterisk on Form 5, Request for Place of Trial. Place an "X" in only one box to request your place of trial. You may not select one of the cities marked with an asterisk (\*).

May I request trial in a more conveniently located city outside my state?

Yes. You may select the city that is most convenient to you without regard to the state in which you live. However, if you elected to conduct your case as a regular tax case, you may not select one of the cities marked with an asterisk (\*).

How can I be sure that I have done everything correctly?

Review the checklist below:

### Checklist for Filing a Petition

#### Have I:

- Printed my full name on the petition, signed the petition, and included my mailing address and telephone number?
- If it is a joint petition, printed the name of my spouse and included my spouse's signature?
- Included a check or money order for \$60 made out to "Clerk, United States Tax Court"?
- Filled in all information required on the petition form?
- Completed the Statement of Taxpayer Identification Number (Form 4)?
- Omitted or removed from the petition, from any enclosed notice of deficiency or notice of determination, and from any other document (other than Form 4) my Social Security number and certain other confidential personal and financial information as specified in the Notice Regarding Privacy and Public Access to Case Files?
- Completed Form 5 (Request for Place of Trial) to indicate where I want to have my trial held?
- Placed in an envelope the (1) original signed petition, (2) Statement of Taxpayer Identification Number, (3) Request for Place of Trial, and (4) check or money order for \$60 for mailing to: United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217?
- Either hand delivered the petition or mailed the petition using the U.S. Postal Service or a designated private delivery service and kept some evidence of the date I mailed the petition to the Tax Court (U.S. Postal Service postmarked certified or registered mail receipt or receipt from the designated private delivery service)?
- Retained a copy of the petition for my records?
- What can I do if I forgot to say everything I wanted to in my petition?

You may want to file an amended petition. If so, you may be required by the Tax Court Rules to file a motion asking for leave to do so. If you are permitted to file an amended petition, you should indicate the additional facts and arguments in the amended petition.

After I file my petition, how many copies of any documents should I send the Tax Court if I decide I want to file anything else?

You should mail a signed original and one copy of any document to the Tax Court. You also should send to the attorney representing the IRS a copy of any document you mail to the Tax Court. Do not forget to include your name and docket number at the top of any document you want to file with the Tax Court. However, do not include your Social Security Number on any document (other than Form 4) you file with the Tax Court. Do include your docket number on any documents you mail to the Court.

What happens after I file my petition?

You will receive a notice of receipt of petition from the Tax Court acknowledging the filing of the petition. That document will tell you the docket number of your case. For example, if you file the petition in 2007, the last two digits will be -07. The docket number might look like 1234-07. If you chose, and the Tax Court granted, S case status, the docket number will contain the letter S at the end, for example, 1234-07S. You should include the docket number assigned to you on all letters and documents you send to the Tax Court and to the IRS. If you represent yourself and file your case after September 9, 2008, you will receive with your notice of receipt of petition registration instructions for electronic access (eAccess). If you filed your case after January 1, 2005, and before September 10, 2008, you may obtain eAccess registration instructions by sending a letter to the Clerk of the Court or by completing the online Petitioner Access Registration Request Form. If you are represented by counsel, your counsel may register for eAccess by completing Practitioner Access registration. You may also request instructions and register for eAccess, but you should first consult your counsel.

Next, an Answer is filed by the IRS. After your petition has been filed, you should send a copy of everything you send to the Tax Court to the attorney representing the IRS. The name and address of the IRS attorney is on the last page of the Answer.

How can I check on the status of my case?

Docket records are available through the Tax Court's Web site. The <u>Docket Inquiry System</u> provides easy access to docket records by allowing you to search using a docket number, individual party name, or corporate name keyword. Docket entries are updated Monday through Friday at approximately 6 p.m. (Eastern time). Orders issued or entered and decisions entered after March 1, 2008, and Tax Court and memorandum opinions starting September 25, 1995 (summary opinions starting January 1, 2001), are available to the public through the Tax Court's Web site without registration for electronic access.

Complete <u>instructions</u> for using the <u>Docket Inquiry System</u> are available on the Tax Court's Web site. See the <u>Petitioners' Guide to Electronic Case Access and Filing</u> on the Tax Court Web site.

Who can I contact if I have questions?

Contact the Office of the Clerk for all questions. You can contact the Tax Court by mail at U.S. Tax Court, 400 Second Street, N.W., Washington, D.C. 20217-0002 or by telephone at (202) 521-0700.

Someone told me that if I want to ask the Tax Court to take some action affecting the other party, I should file a motion. What is a motion?

A motion is a request filed by one of the parties asking the Tax Court to take some action or asking the Tax Court to direct the other party to do something.

When you send a motion to the Tax Court, you should also send a copy of it to IRS counsel (and the other parties, if any, in the case). Attach a Certificate of Service to the copy you send to the Court. A sample Certificate of Service is available as Form 9 in <u>Appendix I</u> of the Rules; there is also a fillable <u>Certificate of Service</u> form on the Forms page. If you are filing a response to a motion electronically, please see the <u>Petitioners' Guide to Electronic Case Access and Filing</u> for more information.

- What are some of the common motions that can be filed?
  - Motion for continuance
  - Motion for leave to file an amended petition
  - Motion to change place of trial
  - Motion for summary judgment
  - Motion for submission of case fully stipulated (Rule 122)
  - Motion for reconsideration of opinion
  - Motion to vacate decision
- Mhat is a motion for summary judgment? How should I respond to one?

The motion. A motion for summary judgment requests a ruling from a judge on some or all of the issues in a case before trial. If a motion for summary judgment is filed, the judge will review the documents submitted by the parties and consider whether the case can be decided without a trial. The party filing the motion must show that there is no genuine dispute of any important fact and that the party filing the motion is entitled to judgment in their favor as a matter of law. See Rule 121.

Your response. If the Court orders you to file a response to a motion for summary judgment, your response must: specify which factual statements in the motion for summary judgment you dispute, state what you contend the actual facts are, and cite the specific evidence that you rely on to support your factual contentions. That is, you must do more than deny or disagree with the motion. Instead, you must set forth specific facts that establish there is a factual dispute and that a trial is necessary to resolve that dispute. It is not enough merely to claim that a fact is in dispute. You must support your claim that there is a question about a material fact (or facts) by submitting with your response the evidence on which you rely.

Your evidence. Your supporting evidence may include your own sworn affidavit or unsworn declaration given under penalty of perjury. (Form 18, Unsworn Declaration under Penalty of Perjury). Your declaration can state facts about which you have personal knowledge. If your evidence includes documents, then you should submit those with your response (preferably numbered as Exhibits), and your declaration should identify and authenticate those documents. Your supporting evidence may also include other affidavits, stipulations, admissions, answers to interrogatories, or deposition transcripts.

Legal disputes. A motion for summary judgment may involve not only factual disputes but

also legal disputes. If you disagree with the IRS's explanation of the law that applies to your case, you should explain your disagreement and cite the statutes, regulations, or other authorities that apply to your case.

**Failure to respond**. If the IRS files a motion for summary judgment in your case and the Court orders you to file a response, then your failure to file a response may be grounds for granting the motion. See <u>Rules 121(d)</u> and <u>123(b)</u>.

**Results of summary judgment**. If a motion for summary judgment is granted in favor of the IRS, then there will be no trial, and a judgment will be entered against you. Similarly, if you file a motion for summary judgment and it is granted, then there will be no trial, and a judgment will be entered in your favor.

I would like to file a motion but I'm not sure what to title it. Will the Court correct the title of a motion (or other document) that is titled incorrectly?

You are expected to submit a motion and other documents that are proper in title, form, and content. The Court expects filings to comply with the Court's Rules of Practice and Procedure. In some circumstances, the Court may retitle a motion or document to more clearly convey the contents and comply with the Rules, or the Court may issue an order directing you to correct or supplement your document.

↑ Where do I send responses to motions?

A response to a motion should be sent both to the Court and to respondent's counsel (and the other parties, if any, in the case). Attach a Certificate of Service to the copy you send to the Court. If you are filing a response to a motion electronically, please see the <u>Petitioners' Guide to Electronic Case Access and Filing</u> for more information.

I filed a timely petition with the Tax Court in a deficiency case. I received a letter from the IRS seeking to assess or collect the tax for the same tax year(s) I petitioned. What should I do?

In a deficiency case, the IRS generally may not attempt to collect the amount in dispute while your case is pending in the Tax Court. You may consider filing a Motion To Restrain Assessment and Collection, and you should include a copy of the collection letter or notice you received from the IRS.

What should I do if I receive a "no change" letter from the IRS after I file a petition in the Tax Court?

You should contact the IRS attorney, paralegal or Appeals officer handling your case and provide them with a copy of the "no change" letter. Be sure to redact your Social Security number from the "no change" letter. In most instances, the IRS will prepare a stipulated decision (an agreed decision) consistent with the "no change" letter. You and the IRS attorney should sign the stipulated decision and submit it to the Court. Your Tax Court case will be closed once the Judge enters the stipulated decision.

What happens if I can't find my copy of a document filed with the Tax Court?

The Tax Court is a court of public record and files are generally available for viewing in the Records Section at the Tax Court. You may also request that particular documents be copied by contacting the Reproduction Section by mail at United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217-0002 or telephone at (202) 521-4683. There is a fee for copy work.

You may view, download, or print any document filed in your case if you have registered for eAccess (Petitioner Access). You may also view any orders issued or entered and decisions entered after March 1, 2008, through the <u>Docket Inquiry System</u> on the Court's

Web site without registering for eAccess.

What if I move or change my address after I file a petition?

You should file a Notice of Change of Address (Form 10) with the Tax Court. You should send a copy to the attorney representing the IRS. If you have moved to a new geographic area, you may want to change the place of trial to a city closer to your new address. If you want a different place of trial, you should send a Motion To Change Place of Trial to the Tax Court and send a copy to the IRS attorney. Please identify the city in which you now want your trial to be held.



To contact the Webmaster for technical issues or problems with the Web site, send an e-mail to <a href="webmaster@ustaxcourt.gov">webmaster@ustaxcourt.gov</a>. For your information, no documents can be filed with the Court at this or any other e-mail address. For all non-technical questions, including procedural, case-related, or general questions about the Court, you must contact the Office of the Clerk of the Court at (202) 521-0700 or by postal mail at U.S. Tax Court, 400 Second Street, N.W., Washington, DC 20217, Attention: Office of the Clerk of the Court.

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